

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Jonathan Berall, M.D., M.P.H.

Plaintiff,

v.

Verathon Inc., Pentax of America, Inc., Karl  
Storz Endoscopy-America, Inc., Aircraft  
Medical, Ltd., LMA North America, Inc.,  
and AirTraQ LLC.

Defendants.

Civ. No. 10-CV-5777 (BSJ)

**PLAINTIFF'S ANSWER TO DEFENDANT  
AIRCRAFT MEDICAL, LTD.'S  
COUNTERCLAIMS**

**JURY TRIAL DEMANDED**

Without admitting the relevance of any of the allegations, Plaintiff Jonathan Berall, M.D., M.P.H. ("Dr. Berall") hereby answers Defendant Aircraft Medical, Ltd.'s ("Aircraft Medical") counterclaims as follows:

Dr. Berall denies each and every allegation contained in the counterclaims that is not expressly admitted below. Any factual allegation admitted below is admitted only to the specific admitted facts, not as to purported conclusions, characterizations, implications, or speculations that may arguably follow from the admitted facts. Dr. Berall denies that Aircraft Medical is entitled to the relief requested, or any other relief.

**A. Invalidity of the '178 Patent**

51. Paragraph 51 states no legal or other conclusions to which a response is necessary. Dr. Berall does not understand if Aircraft Medical intends to include its affirmative

defenses in paragraphs 42-50 as counterclaims. To the extent Aircraft Medical intends to assert these defenses as counterclaims, Dr. Berall denies them.

52. Paragraph 52 states legal conclusions to which no response is necessary.

Nevertheless, Dr. Berall admits the assertions.

53. Paragraph 53 states legal conclusions to which no response is necessary.

Nevertheless, Dr. Berall admits the assertions.

54. Paragraph 54 states legal conclusions to which no response is necessary.

Nevertheless, Dr. Berall admits that he has submitted himself to the Court's jurisdiction.

55. Admits paragraph 55 of Aircraft Medical's counterclaims.

56. Admits paragraph 56 of Aircraft Medical's counterclaims.

57. Denies paragraph 57 of Aircraft Medical's counterclaims.

**B. Non-Infringement of the '178 Patent**

58. Dr. Berall incorporates by reference his responses to paragraphs 51-57 as though fully set forth herein.

59. Denies paragraph 59 of Aircraft Medical's counterclaims.

**DEFENSES**

1. Dr. Berall pleads the following defenses in response to Aircraft Medical's allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the defenses described below, Dr. Berall specifically reserves all rights to allege additional defenses, including (without limitation) those that may be established during the course of discovery:

2. Aircraft Medical fails to state counterclaims upon which relief can be granted.

**PRAYER FOR RELIEF**

WHEREFORE, Dr. Berall demands judgment against Aircraft Medical dismissing each of the counterclaims in its entirety, denying Aircraft Medical the relief it requested, and granting to Dr. Berall all of the relief demanded in the Complaint.

Dated: December 7, 2010

PEARL COHEN ZEDEK LATZER, LLP

By: /s/ David A. Loewenstein  
David A. Loewenstein (DL-5054)  
Douglas Gilbert (DG - 3726)  
[DavidL@pczlaw.com](mailto:DavidL@pczlaw.com)  
[DouglasG@pczlaw.com](mailto:DouglasG@pczlaw.com)  
1500 Broadway, 12<sup>th</sup> Floor  
New York, NY 10036  
Tel: (646)878-0800  
Fax: (646)878-0801

Attorneys for Plaintiff Jonathan Berall  
M.D., M.P.H.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing PLAINTIFF'S ANSWER TO DEFENDANT AIRCRAFT MEDICAL, LTD.'S COUNTERCLAIMS to be served upon counsel of record by filing the document on the court's ECF system on December 7, 2010.

/s/ Keren Livneh  
Keren Livneh